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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,955	10/21/2003	Diane P. Moore	402-194	3315
7590		06/06/2007		
Mark P. Stone 4th Floor 25 Third Street Stamford, CT 06905			EXAMINER PLUMMER, ELIZABETH A	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/688,955

Applicant(s)

MOORE ET AL.

Examiner

Elizabeth A. Plummer

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's amendments and arguments received 03/27/2007 have been entered and considered. An examination of pending claims 1-20 is herein presented.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1 and 16, the phrase "destructive penetrating mounting means" is confusing. How is the penetrating mounting means destructive? To what amount must the mounting means damage something in order to be considered destructive?

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13, 16-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (US Patent 2,991,040).

a. Regarding claim 1, Levy discloses a supporting structure adapted to be removably mounted between a floor and ceiling for providing surface area for mounting one or more articles directly thereon, said surface area of said

supporting structure removably receiving therein destructive penetrating mounting means (41) for said articles mounted thereon, said supporting structure mountable between the floor and the ceiling (Fig. 1) so as to be removably retrained substantially flush against a wall surface by frictional engagement (column 1, lines 45-50) between the supporting structure and the floor and the ceiling.

b. Regarding claim 2, the supporting structure comprises a beam (11a).

c. Regarding claims 3 and 4, the beam (11a) is generally square in cross-sectional configuration (Fig. 2; column 2, lines 20-24). Squares are inherently rectangular.

d. Regarding claim 5, the beam is oriented substantially transversely to the ceiling and the floor (Fig. 1).

e. Regarding claim 6, the supporting structure further includes a means for adjusting the length of the beam to substantially correspond to the distance between the floor and the ceiling such that the beam is mounted in a substantially vertical orientation between the ceiling and the floor by frictional engagement (column 1, lines 40-50; Fig. 1).

f. Regarding claim 7, the means for adjusting includes a resilient element (15) extending from one end of the beam for engaging the ceiling (column 2, lines 25-32).

g. Regarding claim 8, the resilient element (15) extends from the top end of the beam for engaging the ceiling.

Art Unit: 3635

- h. Regarding claims 9 and 13, the supporting structure further includes a supporting element (13) extending from the bottom end of the beam for engaging the floor (Fig. 2).
- i. Regarding claim 10, the supporting element (13) is a supporting foot (Fig. 2).
- j. Regarding claims 11 and 12, the means for adjusting includes a telescoping element (12) extendable from the top of the beam (11a) for engaging the ceiling.
- k. Regarding claim 16, Levy discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more article directly thereon (Fig. 1), the supporting structure comprising at least two beams (11a; column 2, lines 5-15) oriented substantially transversely to the ceiling and the floor (Fig. 1), the beams being maintained substantially flush against a wall surface by frictional engagement between each of the beams and the ceiling and the floor (column 1, lines 40-50).
- l. Regarding claim 17, the supporting structure further includes a bridging element (10, 10a) disposed between two beams.
- m. Regarding claim 19, Levy discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more article directly thereon (Fig. 1), the supporting structure comprising at least two beams (11a; column 2, lines 5-15) oriented substantially transversely to the ceiling and the floor (Fig. 1), at least one bridging element (10,

10a) extending between the two adjacent beams and oriented substantially transversely to the two adjacent beams (Fig. 1), and the beams and bridging element being maintained substantially flush against a wall surface by frictional engagement between each of the beams and the ceiling and the floor (column 1, lines 40-50).

n. Regarding claim 20, the supporting structure further includes a means for adjusting the length of the two beams to substantially correspond to the distance between the floor and the ceiling (column 1, lines 40-45).

3. Claims 1, 2, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stiffel (US Patent 2,855,037).

a. Regarding claim 1, Stiffel discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more articles directly thereon (Fig. 3), said surface area of said supporting structure removably receiving therein destructive penetrating mounting means (78) for said articles mounted thereon, said supporting structure mountable between the floor and the ceiling so as to be removably retained substantially flush against a wall surface by frictional engagement between the supporting structure and the floor and the ceiling (Fig. 3; column 1, lines 20-25).

b. Regarding claim 2, the supporting structure comprises a beam or post (column 2, lines 1-9).

Art Unit: 3635

c. Regarding claim 14, the supporting structure further includes at least one panel (64) mounted to the beam, the panel (64) extending from at least a portion of the outer surface of the beam (Fig. 1,2,3).

d. Regarding claim 15, the supporting structure includes a plurality of panels extending from the beam (Fig. 1,2,3), the panels being foldable between a first compact position and a second extended position (column 4, lines 24-25).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levy (US Patent 2,991,040) in view of Ferdinand et al. (US Patent 3,771,466). Regarding claim 18, Levy discloses a supporting structure with a bridging element (10, 10a) that provides additional surface area for mounting one or more articles to the supporting structure. Levy does not disclose the bridging element being formed from the same material as the two beams. It would have been a matter of obvious design choice to form the bridging element out of the same material as the beams, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Furthermore, it is well known in the art of shelving support structures that bridging elements can be made from the same material as the support

Art Unit: 3635

beams in order to create a more pleasing support structure. For example, Ferdinand et al. teaches a shelving support structure wherein the beams and the shelving are both made of steel (column 1, lines 17-20; column 4, line 57; column 5, lines 6-7) in order to form a uniform support structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Levy to include bridging elements made of the same material as the beams, such as taught by Ferdinand et al., in order to create a more aesthetically pleasing supporting structure.

### ***Response to Arguments***

6. Applicant's arguments filed 03/27/2007 have been fully considered but they are not persuasive.

7. In response to applicant's argument that Levy is intended for mounting shelves instead of mirrors and pictures, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

8. Furthermore, Levy discloses destructive penetrating mounting means, or hooks (41). The hooks cannot be installed on a wall without causing permanent damage in the form of holes or openings.

9. Regarding the bridging element, claims 17 and 19 claim that a bridging element is disposed between two beams. Levy discloses a bridging element (10,10a) disposed between two beams. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which



Art Unit: 3635

applicant relies (i.e., being an irremovable bridging element) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

10. In response to applicant's argument that Stiffel is intended as a partition system, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

#### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3635

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